

DANIEL CALABRO, JR. (*admitted pro hac vice*)
100 North Main Street
Second Floor
Providence, RI 02903
Telephone: (401) 272-2800
Facsimile: (401) 272-2811
calabrolaw@cox.net
calabrolaw@gmail.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff

v.

ROBERT G. LUSTYIK, JR., MICHAEL L.
TAYLOR, and JOHANNES W. THALER)

Defendants

Criminal No. 2:12-cr-00645 (TC)

Honorable Tena Campbell

**DEFENDANT THALER AND LUSTYIK'S OBJECTION TO GOVERNMENT'S
MOTION FOR RECONSIDERATION [323] and ALSO FILED UNDER SEAL**

Now come Defendant's Thaler and Lustyik, by and through undersigned counsel and hereby OBJECT to the Government's Motion for Reconsideration and associated Proposed Order. As grounds therefore, Defendants state as follows:

TRAVEL OF THIS MATTER

As this Court is aware, the Government had originally filed a Motion for a Protective Order to which each of the Defendants objected. The Court then granted a

hearing on the matter and after said hearing, Ordered that counsel for the Defendants were not required to obtain security clearances. The Government has now filed a Motion to Reconsider the decision that the Court has made on the matter.

Defendants Thaler and Lustyik now Object to Government's Motion to Reconsider and incorporate and rely on their original objection [268] as well as this supplement to their original Objection and request that this Honorable Court deny the Government's Motion to Reconsider.

In its new Motion, the Government has not made any new arguments and mainly relies on its original arguments and states that this Court has committed error in its decision as well as its interpretation of current case law. However, the Government also includes in its Motion many misrepresentations and false statements in an effort to sway this Court to amend its original decision.

Some of the false statements relate to allegations by the Government that counsel is hindering the case. One particular instance is where in their Motion, the Government makes many statements about counsel not cooperating and refusing to apply for security clearances. However, this is completely untrue. In fact, counsel for defendant Thaler wrote an email to the Government attorneys and requested that they immediately file an amended pleading removing all of their intentionally false statements. To date, the Government has refused to correct any of the lies that they have included in their Motion for Reconsideration.

**THE GOVERNMENT'S SUPPLEMENT TO THEIR MOTION SHOULD BE
DISREGARDED AS THE INFORMATION WAS IN THE POSSESSION OF ONE
OR MORE OF THE DEFENDANTS PRIOR TO INDICTMENT IN THIS
MATTER**

The Government filed a supplement to their Motion and stated that a violation had occurred and because of this alleged violation, security clearances must be Ordered.

The Defendants have surmised as to what the alleged violation was and submit to this Court that even if there was a violation as the Government alleges, it has nothing to do with obtaining a security clearance. Furthermore, the only people that were copied on the email were counsel for the Defendants, the Government and the Court.

In fact, counsel for Defendant Thaler had emailed CISO Branden Forsgren and he stated that this matter may have been prevented by simply having a brief on classified information. He stated further that he would be able to sit down and speak to us about the matter if we executed the MOU which was approved by the Court. It is our understanding that all counsel immediately executed the MOU as soon as Mr. Forsgren made this request.

Furthermore, Defendants argue that all of the information that was requested was already known to one or more of the Defendants and as such, the material is not protected by CIPA. *US. v. Pappas*, 94 F.3d 795 (2nd Cir. 1996). Again, the Government is merely trying to hide behind CIPA and avoid turning over discovery to the Defendants.

Furthermore, Defendants have made numerous requests that the Government set up a SCIF as well as other secured communications systems which are affordable and easily attainable so that potential classified information could be discussed but to date, this has not occurred.

WHEREFORE, Defendants pray that this Honorable Court will Deny Government's Motion for Reconsideration.

Respectfully Submitted,

Johannes Thaler,
By his attorney,

/s/ Daniel Calabro, Jr.
Daniel Calabro, Jr., Esq.
100 North Main Street
Second Floor
Providence, RI 02903
401-272-2800

Robert Lustyik, Jr.,
By his attorney,

/s/ Raymond Mansolillo, Esq.
Raymond Mansolillo, Esq.
100 Federal Street
Suite 1900
Boston, MA 02110
617-342-7181

CERTIFICATION

I hereby certify that on the 22nd day of July, 2013, I filed this Objection electronically through the CM/ECF system for the Utah Federal District Court.

/s/ Daniel Calabro